

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION**

VAN LYNN OWENS, )  
 )  
 Plaintiff, ) Case No. 1:22-CV-149 NCC  
 )  
 vs. )  
 )  
 DAVID A. DOLAN, )  
 )  
 Defendant. )

**OPINION, MEMORANDUM AND ORDER**

This matter is before the Court on the motion of plaintiff Van Lynn Owens, a pretrial detainee at the Mississippi County Jail, for leave to commence this civil action without prepayment of the required filing fee. ECF No. 8. For the reasons explained below, the Court will grant plaintiff's motion to proceed *in forma pauperis*, assess an initial partial filing fee of \$1.00, and dismiss plaintiff's claims pursuant to 28 U.S.C. § 1915(e)(2)(B).

**28 U.S.C. § 1915(b)(1)**

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action *in forma pauperis* is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to his account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10.00, until the filing fee is fully paid.

*Id.*

Plaintiff did not submit an inmate account statement with his motion for leave to proceed in this civil action without payment of the required filing fee. Plaintiff represents, however, that he has no income and \$0.00 in his account. *See* ECF No. 8. Due to plaintiff's financial representations in his application, the Court will grant his motion for *in forma pauperis* status.

Plaintiff will, therefore, be required to pay an initial partial filing fee of \$1.00, an amount that is reasonable based upon the information before the Court. *See Henderson v. Norris*, 129 F.3d 481, 484 (8th Cir. 1997) (when a prisoner is unable to provide the Court with a certified copy of his prison account statement, the Court should assess an amount "that is reasonable, based on whatever information the court has about the prisoner's finances."). If plaintiff is unable to pay the initial partial filing fee, he *must* submit a copy of his prison account statement in support of his claim.

#### **Legal Standard on Initial Review**

Under 28 U.S.C. § 1915(e)(2), the Court is required to dismiss a complaint filed *in forma pauperis* if it is frivolous, malicious, or fails to state a claim upon which relief may be granted. An action is frivolous if it "lacks an arguable basis in either law or fact." *Neitzke v. Williams*, 490 U.S. 319, 328 (1989). An action fails to state a claim upon which relief may be granted if it does not plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Determining whether a complaint states a plausible claim for relief is a context-specific task that requires the reviewing court to draw upon judicial experience and common sense. *Id.* at 679. The court must assume the veracity of well-pleaded

facts but need not accept as true “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements.” *Id.* at 678 (citing *Twombly*, 550 U.S. at 555).

This Court must liberally construe complaints filed by laypeople. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). This means that “if the essence of an allegation is discernible,” the court should “construe the complaint in a way that permits the layperson’s claim to be considered within the proper legal framework.” *Solomon v. Petray*, 795 F.3d 777, 787 (8th Cir. 2015) (quoting *Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004)). However, even self-represented complaints must allege facts which, if true, state a claim for relief as a matter of law. *Martin v. Aubuchon*, 623 F.2d 1282, 1286 (8th Cir. 1980). Federal courts are not required to assume facts that are not alleged, *Stone*, 364 F.3d at 914-15, nor are they required to interpret procedural rules in order to excuse mistakes by those who proceed without counsel. *See McNeil v. United States*, 508 U.S. 106, 113 (1993).

### **The Complaint**

Plaintiff brings this action pursuant to 42 U.S.C. § 1983 against state court Judge David A. Dolan in his official capacity only. Plaintiff alleges Judge Dolan violated his Fourth Amendment rights by failing “to dismiss case for unlawful seizure” and his Sixth Amendment “right to a fair and speedy trial” because he was “denied bond reduction.” Plaintiff also asserts Judge Dolan violated his Fifth, Eighth, and Ninth Amendment rights. The statement of claim does not provide any factual support for these allegations.

In the section designated to describe his injuries, plaintiff writes: “I was ass[a]ulted in county jail and denied proper medical treatment the Judge David Dolan could order.” Plaintiff does not describe what kind of medical treatment he required, or how the defendant Judge was personally liable for medical care decisions made within a county jail. For relief, plaintiff seeks \$200,000 in monetary damages.

## Discussion

The Court has carefully reviewed plaintiff's complaint and has determined the claims against Judge Dolan must be dismissed.

First, plaintiff brings this action against Judge Dolan in his official capacity only. In an official capacity claim against an individual, the claim is actually “against the governmental entity itself.” *See White v. Jackson*, 865 F.3d 1064, 1075 (8th Cir. 2017). Thus, a “suit against a public employee in his or her official capacity is merely a suit against the public employer.” *Johnson v. Outboard Marine Corp.*, 172 F.3d 531, 535 (8th Cir. 1999); *see also Elder-Keep v. Aksamit*, 460 F.3d 979, 986 (8th Cir. 2006) (stating that a “suit against a public official in his official capacity is actually a suit against the entity for which the official is an agent”). Here, Judge Dolan is alleged to be an employee of the State of Missouri. *See* ECF No. 1 at 2. A plaintiff cannot bring a claim for damages against the State of Missouri under 42 U.S.C. § 1983 because the state is not a “person.” *See Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 71 (1989) (“neither a State nor its officials acting in their official capacity are ‘persons’ under § 1983”); *Kruger v. Nebraska*, 820 F.3d 295, 301 (8th Cir. 2016) (“a state is not a person for purposes of a claim for money damages under § 1983”). Further, “[a] claim for damages against a state employee in his official capacity is barred under the Eleventh Amendment.” *See Andrus ex rel. Andrus v. Arkansas*, 197 F.3d 953, 955 (8th Cir. 1999).

Second, judicial immunity provides a judge with immunity from suit. *Hamilton v. City of Hayti, Missouri*, 948 F.3d 921 (8th Cir. 2020). “Like other forms of official immunity, judicial immunity is an immunity from suit, not just from ultimate assessment of damages.” *Mireles v. Waco*, 502 U.S. 9, 11 (1991). This immunity applies even when the judge is accused of acting maliciously or corruptly. *Pierson v. Ray*, 386 U.S. 547, 554 (1967). *See also Woodworth v. Hulshof*, 891 F.3d 1083, 1090 (8th Cir. 2018) (stating that “judicial immunity is not overcome by

allegations of bad faith or malice”). Moreover, “a judge will not be deprived of his immunity because the action he took was in error or was in excess of his authority.” *Justice Network, Inc. v. Craighead Cty.*, 931 F.3d 753, 760 (8th Cir. 2019).

A judge’s immunity from § 1983 actions bar a plaintiff’s recovery in all but two narrow sets of circumstances. *Schottel v. Young*, 687 F.3d 370, 373 (8th Cir. 2012). A judge does not have immunity for non-judicial actions. *Duty v. City of Springdale, Ark.*, 42 F.3d 460, 462 (8th Cir. 1994). “An act is a judicial act if it is one normally performed by a judge and if the complaining party is dealing with the judge in his judicial capacity.” *Birch v. Mazander*, 678 F.2d 754, 756 (8th Cir. 1982). *See also Justice Network, Inc.*, 931 F.3d at 760 (stating “that to determine whether an act is judicial, courts look to the particular act’s relation to the general function normally performed by a judge”). Additionally, a judge is not immune from lawsuits based on actions taken in the complete absence of jurisdiction. *Duty*, 42 F.3d at 462. This is the case even if the judge’s actions were judicial in nature. *Schottel*, 687 F.3d at 373. In the context of judicial immunity, however, the scope of the judge’s jurisdiction is construed broadly. *Justice Network, Inc.*, 931 F.3d at 762.

Here, neither exception to judicial immunity applies. Plaintiff’s only factual allegations are that Judge Dolan did not dismiss his state case, denied him a bond reduction, and “didn’t take into consideration [his] constitutional rights.” These actions are inarguably judicial in nature. Furthermore, there is no indication that Judge Dolan acted outside of his jurisdiction. As such, judicial immunity bars plaintiff’s § 1983 action against Judge Dolan, even if his decisions were erroneous.

Thus, liberally construing the complaint, plaintiff’s allegations against defendant Judge Dolan in his official capacity shall be dismissed pursuant to § 1915(e)(2)(B) for failure to state a claim.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's motion to proceed *in forma pauperis* [ECF No. 8] is **GRANTED**.

**IT IS FURTHER ORDERED** that plaintiff must pay an initial filing fee of \$1.00 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to "Clerk, United States District Court," and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) the statement that the remittance is for an original proceeding.

**IT IS FURTHER ORDERED** that this action is **DISMISSED** without prejudice for failure to state a claim and/or because it is legally frivolous. *See* 28 U.S.C. § 1915(e)(2)(B).

**IT IS FURTHER ORDERED** that plaintiff's motion for appointment of counsel [ECF No. 2] is **DENIED** as moot.

**IT IS FURTHER ORDERED** that an appeal from this dismissal would not be taken in good faith.

An Order of Dismissal shall accompany this Memorandum and Order.

Dated this 25<sup>th</sup> day of January, 2023.



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HENRY EDWARD AUTREY  
UNITED STATES DISTRICT JUDGE